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Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

Oct. Term, 1998

WILLIAM T. HOUGH and NORMA HOUGH,

Petitioners,

v.

Commmissioner of Internal Revenue,

Respondent,

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

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QUESTIONS

1) Do(es) the existing "controlling" FEDERAL statute(s) existing for time periods of Petitioner(s)'s 1990 & 1991 tax returns "provide for" (i.e. permit) "self-employed" employee-"INDIVIDUAL" (also the employer) to have a pension plan (encompassing Petitioner(s)'s MPPP) business (legal services) of which employer pension-contributions are Social Security tax-free (IRS-Form 1040 Schedule C/1040) -- i.e. NOT taxable cash-distribution(s) on behalf of the self-employed "individual" Petitioner-attorney -- such that the Tax Court Decision(s) (initial negative decison and subsequent Rules 161 and 162 Tax Court negative decision), and 3rd Circuit Court of Appeals negative decision(s) (initial decision and denial of in banc decision) EACH AND ALL ARE/WERE ERRONEOUS in their legal-basis (erroneous obsolete/inapplicable) "common-law-based" Tax Court-stated allegedly-controlling law -- relied-on in their respective erroneous holding(s)/decisions of the Petitioner(s)'s/Appellant(s)'s of business MPPP/pension plan (allegedly) to be void (ab-initio) "invalid" as a basis for Petitioner(s)'s Social security contributions tax liability?

2) Do(es) the Petitioner(s)'s cited "content" of the Petitioner(s)'s cited federal case Gale ... "confirm" specific existing (as of 1990 & 1991) controlling Federal law providing "self-employed" individual-employer(s) (& his associated business and income therefrom), AND (his) included/authorizd pension plan (i.e. MPPP) "deductability" of contribuitions(s) (on behalf of self-employed employee) thereby NOT subject to (liable for) individual for IRS 1040 Sched. C Social Security tax -- i.e. the same as permitted investment-acts (for corporate employee-benefactors of corportion(s) pension

plan contributions)?

3) With regard to foregoing question # 2) Does TRIAL COURT evidence substantuate (prove) that the employee pension fund Trustee Hough invested pension fund-corporate contributions for SOLELY a commercial "investment" (an individual "commercial" investment account) versus NOT utilizing the borrowed funds (at 6% interest rate) for "living" expenses) (or other personal expenses or the like [INFERRED & STATED BY LOWER COURT(S)]? In other words, does the trial court and argued record CONFIRM that there was NO (IRS/lower Court-inferred "misuse" [inferred in the lower Court decision(s) with regard to the employee-borrowed pension funds borrowed by individual-Hough for solely investment purposes into that commercial investment company (that company confirmed by IRS argument-admissions), such that the investment of the Hough-borrowed company pension contribution that was "correctly" deducted as non-taxable IRS schedule 1040C of Petitioner(s)'s filed tax returns of 1990 and 1991 for which Petitioner was erroneously assessed tax and interest and penalty?

4) For the individual tax liability on IRS form 1040/schedule C for the tax years of 1990 and 1991 and subsequent years on the same/similar issues, do(es) denial (by lower Courts) of Petitioner(s)/Appellant(s) of his/their federal statutory rights to a self-employment employer MPPP (pension plan) constitute a violation of "DUE PROCESS" by denial of federal statutory right(s) and/or depriving Petitioner(s) of moneys by assessed social security taxes and interest and penalty(ies) resulting from IRS/Appelee's and the U.S. Tax Court's and the 3rd Circuit Court of Appeals's unlawful/non-statutory affirmance(s) thereof?

5) Do(es) Ex-Post Facto application of

"individual-employee Tax Shelter federal law liability and interest and penalties for unpaid assessed taxes 1990 and 1991 tax IRS Form 1040 Schedule C social security income from the Petitioner(s)'s tax shelter BOTH:
A) purchased, and B) the Shelter having begun operation -- PRIOR TO the "first" effective date of operation of that Tax Shelter, constitute violation(s) of due process in/by the unlawful (ex-postfacto) IRS (& Federal Courts) "taking of" Petitioner(s)'s/Appellant(s)'s assessed-due-tax moneys, interest thereon and money-penalties -- for the individual tax liability years of 1990 and 1991 and subsequent years on the same/similar issues?

6) For the individual tax years of 1990, 1991 and subsequent years, should the IRS be "charged" (as a matter of law) with "admission against (IRS) interest" [i.e. negating Petitioner(s)'s tax liability] via the U.S./IRS agent White's "written admission" of that Petitioner(s)/Appellant(s) are NOT liable for the payment of Form 1040 Schedule C Social Security tax assessed by (for tax years of 1990, 1991 and all other subsequent tax years):
(i) the IRS's Ex-Post Facto application of Social Security Tax on income from the Petitioner(s)'s tax shelter BOTH A) purchased by Petitioner(s)/Appellants and B) the Shelter having begun operation -- (both) PRIOR TO the "first" effective date of that Tax Shelter; and/or
(ii) the IRS's Ex-Post assessment/application of Schedule C Social Security Tax, on "at-risk" (corpus) Tax Shelter investment purchase and owned by Petitioner's -- IRS agent White having stated IN WRITING such investment to be "at risk" to thereby negate Form 10040 Schedule C social security taxation of income from the Petitioner(s)'s tax shelter?

7) Did both the United States Tax Court Decision

& Judgment error by their failures to recognize and/or discuss and/or apply Petitioner(s)'s/Appellant(s)s' unrebutted Tax Court "Trial" Court evidence previously argued in-Appellant(s)'s briefs/motions, etc. (against which IRS/Respondent failed to take any trial court evidence) that the Tax Shelter charter (contract with all limited partners thereof) precluded Appellants/Petitioners from selling their ownership/assets to the general public RESULTED IN the Petitioners/Appellants investment cost BEING "AT-RISK" such that the purchase/investment costs and losses thereby being "at-risk" were/are deductable against business income Form 1040 Sched. C Social Security Tax liability of Petitioners/Appellants -- which thereby would require reversal of each and all adverse rulings/ decisions (etc.) typically based on the U.S. Tax Court Opiniion p.2-cited Sec. 1401(a) and Sec. 1402(a)(13)] [against Appellants/Petitioners by the Tax Court and the 3rd Circuit Court of Appeals for the years 1990 and 1991 -- & subsequent years]?

8) Did the IRS/Appellee/Resqonent and the U.S. Tax and appellate Courts each and both error, by its/their failure(s) to accept the IRS Agent White's admission (argued in Petitioner(s)/Appellant(s) briefs, motions, etc.) that the Tax Shelter charter (contract with all limited partners thereof) precluded Appellants/Petitioners from selling their ownership/assets to the general public RESULTED IN the Petitioners/Appellants investment cost BEING "AT-RISK" such that the purchase/investment costs and losses thereby being "at-risk" were/are deductable against business income Social Security Tax liability of Petitioners/Appellants -- which thereby would require reversal of each and all adverse rulings/ decisions (etc.) (typically based on the U.S. Tax Court Opiniion p.2-cited Sec. 1401(a) and Sec. 1402(a)(13)) against

Appellants/Petitioners by the Tax Court and the 3rd Circuit Court of Appeals for the years 1990 and 1991 -- and subsequent years?

9) For the individual tax liability (form 1040/Schedule C) of/for the years 1990, 1991 and subsequent tax years, did Petitioner's Motion for Reconsideration and/or motion to vacate (in the U.S.Tax Court) and/or Brief on Appeal before the 3rd Circuit Court of Appeals, "APPRAISE" the Courts of the Court's misguided Court-appled (over-ridden) COMMON LAW-bar to individiual non-corporate pension plans (re avoidance of IRS Social Security taxation of pension plan contribution) VERSUS prior "controlling FEDERAL STATUTES such as Title 26, Sec. 1402(a) [re individual employer/employee (non-corporate self-employment) business & Sec. 1401 & SectionS. 402(b) & 401(c)(4) & 401(c)(1) & (2) & 404(a) & 404(a)(8)[re ref. to 401(c) as defined in Sec. 1402(a)], re deductability under Sec. Sec. 404(a), etc.?

10) Even standing alone, DO NOT the foregoing questions conclusively establish the fact lower Courts'decisons and findings and judgments blatent and shocking violations of ignoring and/or FAILURES to apply existing controlling both federal statutes and case law and legislative intent and that such controlling federal law and legislative intent clearly and conclusively ESTABLISH violations of Due Process and violations of the right to not to be unlawfully deprived of property and liberties guaranteed by the Constitution and Amendments thereof for the years 1990, 1991 and subsequent year on the same/similar controlling fact patters?

11) For the individual tax liability for the years 1990, 1991 and subsequent years on the same/simialar controlling fact-pattern matters, in light of the foregoing questions

high-lighting major blatent violations of/by the U.S. Tax Court and the U.S. 3rd Circuit Court of Appeals (& following Petition text) -- IS NOT the IRS & Court(s) "penalty" (assessed against Petitioners) for IRS & Court-alleged "negligence" by Petitioners, even further evidence of the total "failure" of the aforenoted IRS/Appellee and the aforenoted Courts to GRASP the substance and gravity of their major multiple oversights and violations, requiring striking of their holdings, and their penalty as equally devoid of due process?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998/No. _____

WILLIAM T. HOUGH and NORMA HOUGH, Petitioners
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioners pray that a writ of certiorari issue to review the underlying decision and judgment of the United States Tax Court's (a) Memorandum and Finding of Fact And Opinion and decision filed Aug. 6, 1997 entered Aug. 21, 1997 and of the Court of Appeals of the Third Circuit/Memorandum Opinion and Judgment both filed June 30, 1998 and SUR PETITION FOR REHEARING in banc denied on August 28, 1998.

I. The Opinions and Orders issued below:

A) The United States Tax Court's "Decision" & "Findings..." [Docket No. 12228-95] filed Aug. 6, 1997 entered Aug. 21, 1997 (Appendix 1 & 2 /3rd Cir. Crt. App.-Exh. 1 and 2)/Docket # 97-7580:

a) The 3rd Cir. Memorandum is unpublished & and will not be published/tel. information from Court Clerk's Office.

B) Appellant(s)'s Motion for Reconsideration of Tax Court's Opinion [& Supporting AFFIDAVIT WITH AFFIDAVIT-EXHIBITS THEREOF] (Appendix 3/Tax Court Exh. 3) Rule 161 denied by the Tax Court -- without comment, on Oct. 9, 1997. (Appendix 2)

C) Appellant(s)'s Motion to Vacate Decision/Rule 162/United States Tax Court -- filed Oct. 2, 1997, was denied without comment on Oct. 9, 1997. (Appendix 3)

D) Appeal to the United States Third Circuit Court of Appeals:

a) Responsive to Appellant(s)'s Appeal Brief dated and mailed Feb. 2, 1998, and Reply Brief March 17, 1998; Appeal, denied by Memorandum Opinion filed June 30, 1998. (Appendix 4)

b) On Appellant(s)'s SUR PETITION FOR REHEARING (in banc) dated and mailed July 8, 1998 (Appendix 5) to the Third Circuit Court of Appeals, Rehearing was by denied/dated Aug. 28, 1998 (Appendix 6).

c) An Order issued from the United States Third Circuit Court of Appeals that the certified the judgment issued in lieu of formal mandate on July 22, and was recalled on Aug. 10, 1998. (Appendix 7)

d) A certified copy of the Affirming Judgment dated June 30, 1998, reissued by Clerk of the Third Circuit United States Court of Appeals Court-letter dated September 8, 1998. (Appendix 8)

II. Jurisdiction; The United States Supreme Court should review and grant certiorari on the basis:

A. -- that the United States Third Circuit Court of Appeals has ERRONEOUSLY SANCTIONED (and erroneously itself added to) a United States Tax Court decision and judgment based on Tax Court and/or Appellate Court-enunciated ERRONEOUS "purported controlling law" (devoid of identification of its source or basis [IDENTIFIED HEREIN by Appellant(s) as "common law"]) applied by both lower Federal Court(s) in a manner that raise "federal question(s)" in DIRECT HEAD-ON CONFLICT/VIOLATION(S) with and contrary to CONTROLLING applicable BOTH the federal statute(s) and applicable judiciary law followed by this United States Supreme Court, namely:

1. The United States Tax Court decision and judgment decision filed Aug. 6, 1997 entered Aug. 21, 1997 (Appendix 1) and the Third Circuit Court of Appeals's affirmation filed June 30, 1998. (Appendix 4) Each and both have erroneously applied the lower Tax Court decision which for the FIRST TIME applied "purported" controlling law -- which the hereinbelow identified as INAPPLICABLE COMMON LAW IN HEREINBELOW IDENTIFIED FEDERAL CASE -- see below Gale v. United States, United States District Court" that discloses Federal statutory controlling statutory law of a self-employed unincorporated employee owner -- OPPOSITE to the ERRONEOUS Tax Court Decision holding, Gale ... identifying CONTROLLING FEDERAL STATUTORY LAW "opposite to" the "applied law" of the erroneously decision/finding of the United States Tax Court.s -- argued by Petitioner(s) in the aforenoted Petitioner's (in the Tax Court) Request for Reconsideration", refuting the Court's applied "common law". The United States Tax Court's aforenoted law was FOR THE "FIRST TIME introduced" solely in that Tax Court's "findings" and "Opinion"/page - 4 - last two lines of first paragraph under "Opinion" and page - 5 - last paragraph in which "earnings" of Respondents were characterized as "self-employment" ERRONEOUSLY AS (by the Tax Court) allegedly negating any self-employment contributions into petitioner's pension plan -- therein ERRONEOUSLY construed to be NOT "deductible" on Schedule C of petitioner(s)'s joint Federal income tax returns." -- ERRONEOUSLY FATALLY stating (ON pages 5 and 6) THAT "No authority exists for claiming the partnership loss for 1991 on Schedule C of petitioner's 1991 joint Federal income tax return." The "characterized law" (herein identified by Appellant(s) as OBSOLETE) WAS PRIOR REPLACED BY FEDERAL STATUTE -- the "supreme law of the land

[see Testa v. Katt, (1947)330 US 386, 67 S Ct 810, 91 L ed 967, 172 ALR 225, and 1) Mondou v. New York, N.H. & H.R. Co. (1912)223 US 1, 32 S. Ct 169, 56 L ed 327 LRA NS 44.]
was erroneosly "applied" by BOTH the Tax Court & the United States Third Circuit Court of Appeals as "allegedly" defeating/invalidating Petitioner(s)'s/Appellant(s)'s pension plan contributions and a pension plan to a "self-employed" employee. Petitioner(s) motions for reconsideration under Tax Court Rule 161, and Petitioner's Motion to Vacate under Tax Court Rule 162 were both denied WITHOUT WRITTEN DECISIONS(S), on Oct. 9, 1997. [see Wechsler, Federal Jurisdiction and the Revision of the Judicial Code (1948) 13 Law and Contempt Prob 216, 240.] and consistent CONTROLLING FEDERAL JUDICIAL LAW, each hereinbelow identified and explored [such as Gale .../hereinbelow].

B) -- on the basis that the Third Circuit Court of Appeals has so sanctioned such a departure from the accepted and usual course of judicial proceedings by the lower United States Tax Court, AS TO CALL FOR AN EXERCISE OF THIS COURT'S "INHERENT power of supervision" -- in the interest of VERIFICATION and CONFORMITY of the law of judicial decision to CONTROLLING federal statutory and/or judicial law,
[Note: See also Robertson & Kirkham c. 41, and Stern & Grassman c. (4th ed. 1969) IV.]
and Self-employment pension plan law of aforenoted Gale v. United States No. 90 C 3737/United States District Court for the Northern District of Illinois, Eastern Division, 768 F. Supp. 1305; 199 U. S. Dist. Lixis 8759; 91-2 U.S. Tax Cas. (CCH) P50356; 69 A.F.T.R.2d (P-H) 415; 4115; 14; 134 E. C. 1261, footnote statutory section referring to tax code, Title 26, Sec. 1402(a) defining net earnings from self-employed individual, Section 402(b) providing that:
"As employer, self-employed individuals are permitted, like other employers, to deduct

contributions made to pension ... plans for the benefit of themselves ... and such other employees as may be covered under the plan ... not taxed on such contributions made for their benefit, until they receive the funds upon retirement or otherwise."and

"... (D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established. ...

"Section 404(a)(8)(D) defines "earned income," by reference to Sec. 401(c)(2), as the net earnings from self-employment (defined in Sec. 1402, as the net earnings from self-employment (as defined in Sec. 1402) secured through the personal service of the taxpayer. By virtue of Section 404(a)(8)(D), the compensation of a self-employed individual contributions to a Keough plan is treated as earned income. These sections therefore establish three of the four prerequisites to deductibility under Section 404(a)." [Emphasis added] "They do so by CHANGING certain common law assumptions: THAT [under Common Law] a self-employed person was neither his own employer, nor his own employee, and that the income he received from his self-employment was not compensation .... "1992 U.S.Cod Cong. & Adm. News, p. 2964. ...

"(Earned income:

"(A) In general. (Emphasis added.) The term "earned income" means that the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be defined -- ...

"(5) Contributions on behalf of owner-employees. (Emphasis added.) The term "contribution on behalf of an owner-employees ... includes ... a contribution under a plan -- " (a) by the employer for the owner-employee, ..."

C) -- that Due process of law -- SHOCKINGLY WRONG AFORENOTED DECISION(S) of the lower Tax Court and of the Third Circuit Court of Appeals present substantial due process questions arising under the Fourth Amendment arising from lack and/or insufficiency of supporting Respondent trial evidence AND overwhelming IGNORED PETITIONER(S)'S OVERWHELMING TRIAL EVIDENCE AND TRIAL COURT-STATED EVIDENCE CONTRARY TO AND CONTROLLING OVER EACH OF the Tax Court findings and decision and the Appellate Court's evidence-unsupported (ALLEGEDLY) and law-unsupported (ALLEGEDLY) asserted findings and rulings/holdings -- all contrary to aforenoted FEDERAL LAW, REQUIRING by THIS Court, the implementing of supervisiory powers of the honorable United States Supreme Court,[see aforenoted Robertson & Kirkham and Stern & Grassman] TO AVERT INORDINATE UNLAWFUL TAKING OF PROPERTY OF THE PETITIONERS -- that "unlawful taking" being SHOCKINGLY devoid of "due process", AND TO VERIFY "CONTROLLING" FEDERAL LAW AND "JUST" DUE PROCESS OF LAW; See -- Thompson v. City of Louisville, 362 U.S. 199

-- "... whether the ... charges against petitioner "were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the ... Amendment" and that the decision of this question "turns" NOT on the sufficiency of the evidence, but on whether this conviction rests on ANY evidence at all." (underlining & capitalization emphasis "added");and similarly, in Garner v. Louisiana, 368 U.S. 157, 163 that states that court conviction for ... were reviewed and REVERSED.

Re the MOTION FOR RECONSIDERATION BEFORE THE LOWER TAX COURT (before each and both OF the Tax Court and the Third Circuit Court of Appeals.) the arbitrary FAILURE of the United States Tax Court and the United States Third Circuit Court of Appeals TO APPLY this CONTROLLING matter in favor of Appellants -- amounted to each of a

failure to apply "controlling" federal law AND a blatant denial of DUE PROCESS, respectfully mandating that the United States Supreme Court apply its inherent supervisory power by the granting of Certiorari to Appellants.

D) -- that the Third Circuit Court of Appeals IGNORED (failing to comment thereon) Appellant(s)'s RELEVANT AND CONTROLLING UNREBUTTED affidavit (declaration) incorporating AN UNREBUTTED correspondence from an IRS agent - Mr. WHITE (who repeatedly met with and examined Petitioner(s)'s tax papers/records) whose correspondence-letter (to Petitioner Hough(s)) -- a copy thereof included in Appellant(s)'s former 3rd Cir. Court of Appeals Exhibit 3's Affidavit-exh,#5 (IRS AGENT White correspondence) [which correspondence] EXPRESSLY STATES that because the Petitioner's tax shelter investment cost was PRECLUDED from being sold by Petitioner-owner of Tax shelter shares, the tax shelter cost was as provided for by statutory law factually at-risk and thus a deductable sum NOT subject to federal taxation -- ALSO ARGUED BY PETITIONERS/APPELLANTS AT TRIAL -- see 3rd Cir. Appellant-Exhibit 3's Affidavit Exh. 16 (trial testimony); AND ALSO IRS Agent Whites ADDITIONAL letter (To Petitioners)/3rd Cir. Crt/Appellate AFFIDAVIT-EXHIBIT 12 "expressely" stated:

"Taxpayer qualifies for the exception to the Section 465, since real estate was placed in service before (EMPHASIS ADDED) Dec. 31, 1986, AND the IRS publication/3rd Cir. Crt./Appellate AFFIDAVIT-EXH.13 (re "At-Risk rules" PRECLUDING LIABILITY/... place in service before Dec. 31, 1996)"

-- see 3rd.Cir. Appellate Exh.3's Affidavit-Exhibit 16/TRIAL TESTIMONY (P. 45, LINES 6 - 12). FAILURE of the United States Tax Court and the United States Third Circuit Court of Appeals to recognize and/or follow CONTROLLING FEDERAL LAW and to "recognize and

apply" the IRS ADMISSIONS -- as to the foregoing MATTERS OF LAW (and IRS AGENT White/Respondent admission), amounts to each of violations of controlling federal statutory law and/or a denial of DUE PROCESS -- respectfully mandating that the United States Supreme Court grant Certiorari to Appellants.

E) -- that Petitioners argued at the Tax Court Trial hearing that further statutory law to that relied on by Respondents, which further law was the same AFORENOTED relied on by IRS Agent White (aforenoted-above) and included that law and arguments in the Petitioners's briefs before the Tax Court and the Third Circuit Court of Appeals, by which the Shelter purchase contract expressly precluded sale by Petitioner of Petitioner's ownership in the Tax Shelter shares -- which TRIAL testimony was never rebutted by any argument NOR witness testimony nor exhibit to the contrary -- such that the Tax Court and the Third Circuit Court of Appeals each and both fatally errored in FAILING TO STRIKE AND HOLD INVALID the IRS/Respondent's tax liability assessment against Petitioner/Respondents, those Courts ARBITRARILY IGNORING & failing to apply controlling federal statutory law. Accordingly the Supreme Court respectfully is compelled to grant certiorari to Appellants on the ground of each of a) a controlling federal statute overriding the findings and decisions of the Tax Court and the United States Third Circuit Court of Appeals, and b) the Tax Court and/or the United States Third Circuit Court of Appeals have each and both violated DUE PROCESS against Appellants by failing to acknowledge and apply Appellants submitted evidence and to strike the IRS's/Respondent's erroneous tax liability figures assessed against Petitioners/Appellants by each and both the Tax Court and the Court of Appeals. These abuses COMPEL the United States Supreme Court exercise its inherent right of

Supervision, by the granting of Certiorari to Appellants.

F) -- that the Third Circuit Court of Appeals IGNORED (failing to comment thereon) Appellant(s)'s CONTROLLING AND UNREBUTTED affidavit correspondence from an IRS agent - Mr. White (aforenoted) whose correspondence letter to Petitioner(s) [former Exhibit of Appellant's Brief], STATED THAT BECAUSE OF PRIOR COMPLETION OF PURCHASE OF THE TAX SHELTER (by Petitioner(s)/Appellants) PRIOR TO Petitioner(s)/Appellant(s) Hough(s) were NOT subject to nor liable under the IRS tax Assessment therefor, nor under other otherwise applicable Section relied-on by the IRS -- such as Section 1401(a) and 1401(a)(13) WHICH AT A SUBSEQUENT DATE became SOLELY "later" for the first time (date) would have become "applicable" and/or "enforceable" against Petitioner(s)/Appellant(s). Such arbitrary denial of DUE PROCESS to Appellants respectfully mandates that the United States Supreme Court exercise it inherent power of supervision over lower federal Courts by a granting of Certiorari to Appellants.

G) -- that at the United States Tax Court Trial, Petitioners/Appellants testified to and presented evidence in support of the Petitioner(s)'s Tax Shelter having been purchased and that the Tax Shelter was in operation PRIOR to the "EFFECTIVE" date of the statute(s) on which the Respondent/IRS relied and based its assessment of alleged tax liability of Petitioners, THEREBY PROVING the fact of the invalid and unenforceable erroneous and ill-founded Respondent/IRS tax assessments against Petitioners -- which Respondent UNREBUTTED trial testimony and proofs the Tax Court IRRESPONSIBLY IGNORED, likewise irresponsibly affirmed by the United States Third Circuit Court of Appeals. Such ARBITRARY

decisions of the United States Tax Court and the United States Court of Appeals, each constituted a VIOLATION OF DUE PROCESS by their arbitrary and unlawful taking of Petitioner(s)'s/Appellant(s)'s property, thereby respectfully MANDATING the Supreme Court to exercise its inherent power of supervision and control of those Court in the interest of both justice and conformity.

H) -- that DEVOID OF ANY SUPPORTING EVIDENCE taken by Respondent at trial (or otherwise) by the IRS/Respondent, in support of the Court-asserted PURPORTED "evidentiary facts" in the Tax Court Findings and Decision and 3rd Circuit decision, evidentiary-unsupported Court-asserted "purported" facts (DEVOID OF ANY TRIAL TESTIMONY BY ANY RESPONDENT WITNESS [NOR BY Petitioner] thus thereby amounting to erroneous-law via judicial-HEARSAY) served as the SOLE basis for the Tax Courts "alleged factual" "findings" and decision and the third Circuit Court of Appeals's denial of Petitioner(s)'s/Appellant(s)'s Appeal, IGNORING AND NOT ADDRESSING Court Errors (identified repeatedly by Appellant/Petitioner(s)) in the Tax Court judicially "creating" NON-EXISTENT purported factual-construction contrary to trial evidence of Petitioner(s)'s/Appellant(s) -- referred to by Petitioner(s)/Appellant(s) as "Court-hearsay" -- MORE CORRECTLY characterized as TOTAL ABSENCE OF ANY EVIDENCE in support of the totally misleading and erroneous lower and appellate Court(s)'s findings and decisions/rulings by which Petitioners/Appellants were found to be liable for the IRS assessed due taxes. Accordingly, such reckless non-statutory conduct and/or practice by the lower Tax Court and the Third Circuit Court of Appeals, MANDATES that THIS Honorable Court INVOKE its inherent aforenoted SUPERVISORY POWERS over those Courts, to reverse the Tax Court findings and Decision and the

holdings of the Third Circuit Court of Appeals. Re aforenoted cited cases, Robertson & Kirkham c. 41, and Stern & Grassman c. (4th ed. 1969) IV.]Thompson v. City of Louisville, 362 U.S. 199, "... that the decision of this question "turns" not on the sufficiency of the evidence, but on whether this conviction rests on any evidence at all." (underlining emphasis "added"); and Garner v. Louisiana, 368 U.S. 157, 163 -- reviewed and REVERSED because they were "so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the ... Amendment"; and similarly, inWashington v. United States, 357 U.S. 348, where a federal conviction was reversed without elaboration "because of the insufficiency of the evidence."

Additionally, the present United States Tax Court decision and/or the findings and decision of the United States Court of Appeals in their respective HEARSAY and/or "ANTI-VERIFICATION of the CONTROLLING FEDERAL STATUTORY &/OR CASE LAW(S) is/ARE simply unjust, unreasonable and plainly wrong -- see aforenoted McElwain, The Business of the Supreme Court as Conducted by Chief Justice Hughes, 63 Harv. L. Rev. 5, 13 (1959). The result on Petitioner's is clearly "harsh" -- in light of overwhelming trial evidence (and controlling law) by Petitioners in rebuttal of such outcome -- see aforenoted E.g., Montana v. Kennedy, 366 U.S. 308, 309, where certiorari was granted "in view of the apparent harshness of the result entailed".

The decision of the underlying Tax Court and of the Court of Appeals clearly of "doubtful determination" -- see aforenoted Williams v. Lee , 358 U.S. 217, 218.

Related thereto even concerning belated "collateral estoppel", in Rheinberger v. Security Life Ins. Co. of America CCA7th, 1944/146 F2d 680, 683 (following Illinois law) that Court stated

"The doctrine that where a court has once

acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, cannot be assailed, is only correct [solely] when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable. Armstrong v. Obucino, 300 Ill 140, 143, 133 NE 58. In other words, though the court may possess jurisdiction of the person and the subject matter, it is still limited in its modes of procedure and in the extent and character of its decree."

Such CLEARLY IS THE CASE HERE, AND the foregoing relevant and controlling decisions respectfully mandate that this issue respectfully be reviewed to assure that Appellants receive the benefit of DUE PROCESS under the United States Supreme Court's inherent supervisory authority, by the granting of Certiorari.

I) -- that contrary-to CONTROLLING FEDERAL TAX COURT TRIAL RULING OF LAW, the Tax Court trial Judge, disavowing Respondent's trial Arguments, RULED that the Petitioner(s)'s Amended Returns as timely filed by Petitioner and "controlled" OVER (AGAINST) Respondent's ERRONEOUS base for computation of Petitioner(s)'s tax liability as set-forth in the IRS Assessment of taxes due for all relevant years. ERRONEOUS AND ARBITRARILY UNLAWFULLY NON-STATUTORY SUBSTITUTING AFORENOTED NON-LAWFUL LIABILITY-FIGURES found in the THE Tax Court and Third Circuit Court of Appeals DECISIONS each and both constitute a violation of JUDICIAL TRIAL LAW (OF RECORD) and ALSO A VIOLATION in DUE PROCESS (unlawful taking of property) violation of the Trial Court JUDICIAL-LAW trial FEDERAL TAX Court Ruling of law set-forth in Petitioner(s)'s Briefs. The Tax Court decision and the affirming third Circuit Court decision

of Appeals each and both ERRONEOUSLY "sustained" the ORIGINAL ERRONEOUS Initial IRS/Respondent tax assessment against Petitioner(s) "erroneously" DEVOID of (trial-Court-ruled) "incorporating" the AMENDED RETURNS'S controlling computation figures -- resulting in UNLAWFUL REVERSIBLE overassessments against Petitioners/Appellants -- IN VIOLATION OF of BOTH: 1. JUDICIAL Federal verified trial law VERIFIED by the Trial record -- and
2. DUE PROCESS by unlawful taking of Petitioner(s)'s/Appellant(s)'s property.
Additionally, both of these violations can be corrected SOLELY by the honorable United States Supreme Court asserting its "inherent supervisory authority and power" to redress such blatent and arbitrary violations of Petitioner's inherent right to DUE PROCESS and/or violation(s) of controlling judicial federal law, by the United States Supreme Court respectfully granting of Certiorari to Petitioners.

J) -- that likewise, AS CONTROLLING FEDERAL TAX COURT TRIAL RULING OF LAW, The Tax Court trial Judge, disavowing Respondent's trial Arguments, RULED that the Petitioner(s)'s IDENTIFIED ERRONEOUS COMPUTATION INDICIA/FIGURES FOUND THROUGHOUT THE ITS/Respondents's computation-explanation IN SOLE SUPPORT for the eventual IRS-alleged tax deficiencies of Petitioner(s), were testified to by Petitioner-Witness at Trial hearing (AND subsequently briefed by Petitioners), and Respondent NEVER offered any trial rebuttal evidence and FAILED to submit any revised and/or corrected data on which Petitioner(s) alleged tax liability was/is based -- ERRONEOUSLY adopted by the lower Tax Court decision and by the Federal Circuit Court of Appeals -- ERRONEOUSLY as allegedly Respondent's base for computation of Petitioner(s)'s tax liability as set-forth in the IRS Assessment of taxes due for

all relevant years. ERRONEOUS AND ARBITRARILY UNLAWFULLY NON-STATUTORY SUBSTITUTING AFORENOTED NON-LAWFUL LIABILITY-FIGURES found in the Tax Court and Third Circuit Court of Appeals DECISIONS each and both constitute a violation of JUDICIAL TRIAL LAW (OF RECORD) and ALSO A VIOLATION in DUE PROCESS (unlawful taking of property) violation of the Trial Court JUDICIAL-LAW trial FEDERAL TAX Court Ruling of law set-forth in Petitioner(s)'s Briefs. The Tax Court decision and the affirming third Circuit Court decision of Appeals each and both ERRONEOUSLY sustained the ORIGINAL ERRONEOUS Initial IRS/Respondent tax assessment against Petitioner(s) DEVOID of incorporating the AMENDED RETURNS'S controlling computation figures -- resulting in UNLAWFUL REVERSIBLE overassessments against Petitioners/Appellants -- in violations of the BOTH

1. JUDICIAL Federal verified trial law VERIFIED by the Trial record -- and

2. in violation of DUE PROCESS by the unlawful taking of Petitioner(s)'s/Appellant(s)'s property. Additionally, each and both of these violations can be corrected solely by the honorable United States Supreme Court asserting its inherent supervisory authority and power to redress such blatent and arbitrary violations of Petitioner's inherent right to DUE PROCESS and/or violation(s) of controlling judicial federal law, by the United States Supreme Court respectfully granting of Certiorari to Petitioners.

K) -- that the lower United States Tax Court and the Third Circuit Court of Appeals in total violation of the spirit of Swift v. Tyson/p. 3042 of Moores Federal Practice (1978) Vol. 1, part 2 -- in total violation of the spirit of Swift v. Tyson, EACH has blatently FAILED TO FOLLOW CONTROLLING FEDERAL CASE LAW (versus non-controlling UNIDENTIFIED-source law (assumed

to be state Common law) [Federal law] OF title 28 of section 1652 of the judicial code and judicial revision act of 1948 (H.R.) 3214, 80th Congress, 2d Session (1948):
"1952. State laws as rules of decision. The laws of the several states as rules of decisions. The laws of the several States, except where ... Act of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."
The term "civil actions" replaced the 1789 Sec. 28 of prior Title 28/Sec. 725 term "common law" in order to conform with the Federal Rules of Civil Procedure. [See Moore's Federal Rules of Civil Procedure (1957)/Vol. 1A-Part 2, at page 3043/Sec. 0.305[1]. (See Wechsler, Federal Jurisdiction and Revision of Judicial Code (1948) 13 Law and Contempt Proof 216, 240.]

Accordingly, the Petitioner(s)'s/Appellant(s)'s argued and briefed/documented CONTROLLING Federal Statutes AUTHORIZING TAX-DEDUCTABLE PENSION PLAN CONTRIBUTIONS by a SELF-EMPLOYER individual this law [ignored by the Tax Court's denial without-comment/responsive to the Appellant's post-decision Tax Court Motions] included in the Appellant(s) Brief to the Third Circuit Court of Appeals -- responsive to the FIRST TIME-RAISED "rule of law" by (solely-in) the Tax "Court findings and decision", BUT WAS "again" IGNORED, i.e. NOT RESPONDED TO NOR DEALT-WITH by the Third Circuit Court of Appeals -- violation(s) each and both being failures to follow CONTROLLING FEDERAL STATUTES and/or failing to afford DUE PROCESS to Appellant(s) -- an unlawful denial and taking of the property of Appellants, respectfully respectfully requiring the United States Supreme Court to afford DUE PROCESS, respectfully by exercising its inherent supervisory authority and power to grant of Certiorari to Appellants.

L) -- that the United States Tax Court trial court record and Briefs before the Tax Court and the Federal Appellate Circuit Court all established on the record, that from the beginning, the "1990" year as well as the "1991" year were argued at trial and in trial Briefs -- including all foregoing paragraphs of this petition, apart from Petitioner prior to the time of filing the 1990 return HAVING BEEN ASSURED IN ADVANCE by an IRS agent that to place/itemize Tax Shelter income on line 18 of the 1990 joint return (as a partnership loss) would NOT deter Tax Payer/Petitioner from continuing to assert deductability thereof from Social Security taxation -- OBVIOUSLY an IRS MATERIAL/PREJUDICIAL "misrepresentation" to Petitioner; apart therefrom, NUMEROUS computation errors and other deficiencies thereof were attacked at the United States Tax Court Trial hearing by Petitioners, DEVOID OF any trial Respondent witness rebuttal evidence from Respondent on that matter. Accordingly, the Tax Court Opinion relating to 1990 is clearly erroneous and a part of Petitioner's appeal, and petition for certiorari.

M) -- that Petitioner(s)/Appellant(s) submitted both TRIAL "unrebutted" documentary evidence and Brief Arguments before both the United States Tax Court and the United States Third Circuit Court of Appeals, ESTABLISHING AND SUBSTANTIATING "absence" of purported "negligence" [in Appellant(s)'s proceeding and contesting erroneous assessments by the IRS] by virtue of:

[1]. RELIANCE ON each and BOTH the Shelter Papers stating that THE TAX ATTORNEY THEREOF believed/was of the opinion that there NO tax liability to the Limited Partners (i.e. to Petitioners/Appellants); SUCH IS CLEARLY "CREDIBLE" EVIDENCE (Contrary to the Court

opinion holding) and

[2]. ON IDENTICAL ISSUES, responsive to Petitioner(s)'s (Appellant(s)'s) Arguments and written protest against the IRS -- in which Petitioner(s) demanded AND WAS/WERE GIVEN a "refund" for previously-assessed and paid taxes, thereby "leading" the Petitioner(s)/Appellant(s) to EXPECT the IRS to FOLLOW their "PRIOR" 14. IT BEING SELF EVIDENT THAT SOMEWHERE &/or SOMEHOW the Judicial process HAS FAILED/FALLEN, it is NOT irrelevant nor a stretch of the imagination that one or more of the aforenoted federal Tax Court and/or federal Court of Appeals, is/are [even if subconciously] "unlawfully-hesitant" to make ruling(s) "AGAINST" the IRS, the aforenoted identified different errors "on their face" having the appearance of being clearly arbitrary and capricious. Such is apart from, or perhaps related to a prevelant practice of some overworked judge(s) passing on to his/their law clerk(s) the task of principally composing and writing of decisions for case(s) before the judge(s). In light of the shockingly abundant independent and separate substantial grounds in support of Appellant(s)'s petition for Certiorari, Petitioner(s) (devoid of proof thereof) nevertheless in good faith truely suspect that one or more such aforenoted factors are perhaps here clearly involved is this case, to the detriment of the lay public victims such as Appellants. Accordingly, in the interest of "avoiding" even a "possibility" of such potential violations of Due Process, the United States Supreme Court is justified in granting Appellant(s)'s petition for Certiorari.

III. Constitutional Provisions Involved: 1. Inconsistencies with controlling Federal statutory and/or judicial law, and maintaining consistency and integrity thereof.

2. Inconsistencies with controlling Judicial

judicial case law and/or inconsistent federal and/or state common law.

3. Gross violations of Due Process mandating supervision the federal and/or state Courts in violation of Federally guaranteed Due Process.

IV. Statute(s), Judicial Law and Regulation(s) Involved:

1. Aforenoted Gale v. United States No. 90 C 3737/United States District Court for the Northern District of Illinois, Eastern Division, 768 F. Supp. 1305; 199 U. S. Dist. Lixis 8759; 91-2 U.S. Tax Cas. (CCH) P50356; 69 A.F.T.R.2d (P-H) 415; 4115; 14; 134 E. C. 1261, footnote statutory section referring to tax code, Title 26, Sec. 1402(a) defining net earnings from self-employed individual, Section 402(b); and

2. Other "aforenoted" controlling law re Ex Post Fact, and Appellants's re "at-risk" exception (being barred from public sale of the limited-partner's shares)ignored by the Tax Court); and Tax Court Trial Judge "holding" that the amended returns control (ignored by the IRS and by the Tax Court decision), and Appellant(s) Trial-testimony (unrebutted) re prior refund based on identicl law, and re advice of Shelter Tax Attorney, and re the IRS erroneous identifications and computations and math figure -- errors of which were substantiated by Respondent's trial unrebutted testimony, etc., the IRS failure to include the Tax Court (apparently "common") law erroneously applied versus statutory law making Self-employment pension contributions deductable against social security taxation, etc., all clearly establish NO NEGLIGENCE by Petitioner's persistence in pursuing past and present litigation against the IRS.

V. Statement of the Case:

1. FAILURE of BOTH lower United States Tax and appellate Third Circuit Court of Appeals, to

apply controlling Federal and Judiciary CONTROLLING aforenoted Statutory law as set-forth in aforenoted case and the INCONSISTENT and CONTROLLING aforenoted Gale ... case THAT EACH AND BOTH REBUT AND OVER-RIDE THE ERRONEOUSLY APPLIED COMMON LAW SOLELY RELIED-ON by the lower United States Tax Court and the appellate United States Third Circuit Court of Appeal -- mandate that IN FACT under aforenoted JUDICIAL AND aforenoted FEDERAL LAW Petitioners/Appellants CORRECTLY/RIGHTLY deducted the business "cost" of its "contributions" to employee/employer private "service" legal law practice (patents, trademarks, etc. aforenoted) -- rendering the decisions/holdings and bases therefor "totally erroneous and invalid" -- as REQUIRED to be declared by this Court by a granting of certiorari to Appellants, to invalidate all ILLEGAL assessed IRS/Respondent-levied taxes liabilities. See Appellent's aforenoted appended lower Tax Court Exhibits nos. 1 & 2.

2. Both the lower United States Tax Court and the United States Third Circuit Appellate Court conclusively violated JUDICIARY FEDERAL LAW and CONSTITUTIONAL AMENDMENT V "DUE PROCESS" by unlawfully FAILING to follow "trail" judge-decisions mandated by the lower Tax Court -- of aforenoted errors; see appended lower Court Exhibits 1 & 2/Appendix Exhibits 1 & 2.

3. Both the lower United States Tax Court and the United States Third Circuit Court IGNORED and violated the exhibit-documented MPPP trust records of all past contributions, and of the Trustee's authority to make 6% loans of the MPPP-contributed funds, and of the Trustee's therefore authorized endorsement of MPPP-contribution business-checks to the individual-employee person who immediately invested the same in the employee's (Petitioner(s)'s/Appellant(s)'s) personal

stock-brokerage account and IGNORED Appellant's UNCONTESTED "trial evidence by Petitioners/Appellants -- which resulted in an erroneous basis APPLIED by BOTH the Federal lower Tax and appellate Third Circuit courts.

4. Both the lower Tax Court and the Third Circuit Court of Appeals "sustained" Respondent's applied and argued EX POST FACTO statutory laws, namely --

1) applied the Court(s)-identified statutes 1402(a) and 1402(a)(13) In violation of BOTH Petitioner Trial Court arguments and witness testimony and supporting Brief Exhibits -- NONE of which was EVER rebutted by "any" Respondent/IRS witness-evidence NOR OTHERWISE, and

2) Affidavit-evidence (ADMISSIONS) IRS AGENT WHITE'S "written" ADMISSION of the PRIOR controlling beginning of pre-statute purchase by Petitioners, of the Tax Shelter -- OBVIATING the FACTUAL Ex post-facto "APPLICATION" THEREOF BY THE IRS/Respondent.
ACCORDINGLY, for both 1990 and 1991 the IRS/Respondent tax liability assessment against Petitioners/Appellants, MUST be overturned/reversed -- mandating a granting of Certiorari by this Court under both its inherent supervisory powers and to correct due process violations in the unlawful taking of Petitioners/Appellants property.

5. Both the lower Tax Court and the Third Circuit Court of Appeals "sustained" Respondent's applied and argued DISTINGUISHED statutory laws, namely --
1) FAILURE to apply SUBSEQUENT CONTROLLING STATUTORY LAW overriding applied the Court(s)-identified statutes 1402(a) and 1402(a)(13) --
a. In violation of DISTINGUISHED "AT-RISK"

Tax Shelter INVESTMENT-COSTS of Petitioners/Appellants IN FACT "BEING DEDUCTABLE" because of Petitioner's Tax Court WITNESS TRIAL PROOF Proof & Exhibits -- NEVER CONTESTED/REBUTTED BY ANY TRIAL WITNESS EVIDENCE NOR REBUTTAL ARGUMENTS, argued by Petitioners"/Appellants's Briefs AND b. IN VIOLATION of BOTH Petitioner Trial Court arguments of and evidentiary-submission of Affidavit-evidence (ADMISSIONS) IRS AGENT WHITE'S "written" ADMISSION of the PRIOR controlling beginning of statute MAKING "AT-RISK" TAX SHELTER INVESTMENTS "ALLOWABLE" -- CONTRARY TO AND IN VIOLATION OF both 1990 and 1991 the IRS/Respondent tax liability assessment against Petitioners/Appellants -- which MUST be overturned/reversed -- mandating a granting of Certiorari by this Court under both its inherent supervisory powers and to correct due process violations in the unlawful taking of Petitioners/Appellants property.

6. Failure of each and both the United States Tax Court and the United States Third Circuit Court of Appeals, to give CONTROLLING weight to Petitioner(s)s/Appellant(s)'s CONTROLLING both Judiciary Trial Court law and unrebutted TRIAL Evidence and argued judicial and statutory overiding law, of self-employed Petitioner, of authorized loan by the MPPP trustee to employee-individual Petitioner, of ignored EX POST FACTO application of IRS/Respondents sole basis for the ill-founded affirmed IRS liability assessments against Petitioners/Appellants, etc., each and all constitute GROSS unlawful taking of Petitioner(s)'/Appellant(s)'s property DEVOID OF AND IN VIOLATION OF DUE PROCESS OF LAW. The IRS position/assessment and Court violations FAILED to consider and apply "controlling" trial judge rulings and PETITIONERS'S UNCONTESTED witness testimony BY ANY RESPONDENT-witness testimony or exhibits (NO REBUTTAL witness nor rebuttal witness evidence).

The Tax and Appellate Circuit Appellate Court(s) failed to consider and/or apply Tax Trial Court Petitioner WITNESS Evidence of SUBSTANTIAL "computation errors and illogical math-figures, etc. PROVEN BY Petitioner(s)/Appellants [SEE 3rd Cir. Crt.-APPELLANT'S EXHIBITS-AFFIDVIT-Exh.43] - thereby the IRS/Respondent UTILIZING "INCORRECT" FIGURES in its assessment of INCORRECT LIABILITY against Appellants, and the like. Accordingly, the foregoing gross-errors of the IRS/Respondent and the Tax Court erroneous choice of non-federal law, and of all other aforenoted Respondent and judicial violations --the Federal Tax Court and the Third Circuit Court decision each and both appearing to be SHOCKINGLY WRONG (see Thompson v. City of Louisiville 362 U.S. 199, re DUE PROCESS aforenoted violations, respectfully "at-least" CUMMULATIVELY require the Supreme Court to grant the petition for Certiorari by Appellants -- there being a total "void" of supporting Respondent evidence (see aforenoted Robertson & Kirkham & Stern & Grassman & Thompson v. City of Louisville and Montana ...

7. In light of Petitioner's Trial Court testimony and exhibit identification and Brief arguments, identifying gross and multiple TOTAL & "MATERIAL" "errors" in controlling-figures UPON WHICH THE IRS "UNALTERED" (uncorrected) Notice of Tax Assessment liability for respective 1990 and 1991 years CONSTITUTING DENIAL OF DUE PROCESS, respectfully the United Supreme Court is compelled to grant Certiorari to Appellants.

8. In light of the GROSS MULTIPLE VIOLATIONS of both the aforenoted controlling federal statutory law and the aforenoted shocking REPEATED (multiple) violations of Due Process aforenoted, TAKEN WITH Appellant's substantial supporting data of a "professional tax attorney" of the tax shelter opinion and TOGETHER WITH a

"former year" IRS-admission REFUND on substantially "identical" questions of controlling law, ALL IN SUPPORT OF Petitioner(s)'s/Appellant(s) "CONTESTING" assessed "negligence liability" (based on a MERE prior legal presumption of negligence) of judicially-supported IRS/Respondent purported/alleged "NEGLIGENCE" of Petitioners/Appellants, respectfully the United Supreme Court is compelled to grant Certiorari to Appellants.

For foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the third Circuit.

Respectfully submitted,

William T. Hough, Esq.

Attorney for Petitioners/Appellants

Member of the bar of this Court

APPEND.1/Tax Court FINDINGS & DECISIONS

UNITED STATES TAX COURT
Washington, DC 20217

WILLIAM T. HOUGH and NORMA HOUGH, Petitioners, v. COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET No. 12228-95

DECISION

Pursuant to the determination of the Court as set forth in its Opinion, T.C. Memo. 1997-361, filed August 6, 1997, it is

ORDERED AND DECIDED that there are deficiencies in Federal income tax and accuracy-related penalties due from petitioners for the years 1990 and 12991 as follows:

Year	Deficiency	Accuracy-Related Penalty/Sec.666(a)
1990	$7,849	$1,570
1991	9,613	$1,923

Stephen J. Swift
Judge

ENTERED: AUG 21, 1997

T.C.Memo.1997-361
UNITED STATES TAX COURT
WILLIAM T. HOUGH AND NORMA HOUGH, PETITIONERS v. COMMISSIONER OF INTERNAL REVENUE, Respondent
Docket No. 1228-95. Filed August 6, 1997.
William T. Hough, pro se.
Susan G. Lewis, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

SWIFT, Judge: Respondent determined deficiencies in petitioner's joint Federal income taxes and accuracy-related penalties as follow:

Year	Deficiency	Accuracy-Related Penalty Sec. 6662(a)
1990	$7,849	$1,570
1991	9,613	1,923

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure. References to petitioner are to William T. Hough.

The only issue for decision is whether for purposes of calculating petitioners' self-employment tax liabilities for 1990 and 1991 certain deposits and claimed partnerships losses may be deducted on Schedule C of petitioners' joint Federal income tax returns.

FINDINGS OF FACT

Many of the facts have been stipulated and are so found. At the time the petition was filed, petitioners resided in Basking Ridge, New Jersey.

During the 1970's and part of the 1980's, petitioner practiced law through his professional law corporation (PC), and Petitioner established through his PC a money purchase pension plan.

In 1975, petitioner received a favorable determination letter from respondent regarding the money purchase pension plan. Respondent's determination letter qualified the plan so that for Federal income tax purposes contributions made to the plan would be deductible from the PC's gross income. Respondent's determination letter, however indicated that with respect to the pension plan, due to anticipated legislation, the determination letter was only effective until the end of 1975.

During 1990 and 1991, petitioner no longer practiced law through his PC, rather petitioner practiced law as a sole proprietor.

In each of the years 1990 and 1991, petitioner deposited $30,000 into an account maintained in his name apparently at a stock brokerage company

allegedly as a contribution to the above money purchase pension plan.

On their 1990 and 1991 joint Federal income tax returns, petitioners claimed Schedule C deductions with respect to each of the above $30,000 deposits into the stock brokerage account. These deposits were reflected on petitioner' joint income tax returns as deductible contributions to a qualified pension and profit sharing plan.

In amended joint Federal income tax returns for 1990 and 1991, and to reflect the percentage-of-gross-income limitation applicable to deductible pension plan contributions, petitioners reduced the amount of the claimed Schedule C deductions with respect to the above deposits into the stock brokerage account to $11,898 for 1990 and $22,339 for 1991.

On their 1990 and 1991 joint Federal income tax returns, petitioners also claimed loss carry-forward deductions in the respective amounts of $137,047 and $86,367 relating to an investment in a limited partnership. The claimed $137,047 loss carry-forward deduction for 1990 was reflected on line 18 of petitioners' 1990 joint Federal income tax return as a partnership loss. It was not reflected as a Schedule C business expense deduction.

The claimed $86,367 loss carry-forward deduction for 1991 relating to the investment in the limited partnership, however was reflected on Schedule C of Petitioners' 1991 joint Federal income tax return as a business expense deduction.

By claiming the alleged pension plan contributions for 1990 and 1991 and the claimed partnership loss for 1991 and the claimed partnership loss for 1991 as deductions on Schedule C of petitioners' joint Federal income tax returns, petitioners' reported self-employment income was reduced, and no self-employment tax liability was reported as due on petitioners' 1990 and 1991 joint Federal

income tax returns.

OPINION

Generally, taxpayers are required to pay employment taxes on net earnings from self-employment. Sec. 1401(a). Net earnings from self-employment are defined in section 1402(a) as gross income derived by self-employed individuals from any trade or business less certain enumerated expenses. Contributions to qualified or unqualified pension plans are not included among the enumerated expenses that may be deducted from earnings from self-employment.

Also, section 1402(a)(13) specifically excludes from the calculation of net earnings from self-employment a limited partner's distributive share of income or loss from a partnership.

Petitioners' theory for claiming Schedule C deductions with respect to the deposits into petitioner's stock brokerage account is not entirely clear. Petitioners apparently argue that in 1990 and 1991 petitioner's $30,000 deposits into petitioner's stock brokerage account (subject to the percentage limitations reflected in petitioner's amended joint income tax returns) represented deductible schedule C payments to petitioner's PC. Petitioners' theory for claiming a Schedule C deduction on their 1991 joint Federal income return with respect to the claimed partnership loss is incomprehensible.

Respondent, among other things, argues that petitioner's deposits in 1990 and 1991 into the stock brokerage account and the claimed partnership loss for 1991 should be reflected, if anywhere, not as deductions on Schedule C but respectively on lines 17 and 18 of petitioners' joint Federal income tax returns (Forms 1040) where they would not reduce petitioners's self-employment income.

We agree with respondent as to both items. In 1990 and 1991, petitioner practiced law as a sole proprietor. Earnings from petitioner's law practice therefore constituted earnings from

self-employment, and any contributions into petitioner's pension plan would not be deductible on Schedule C of petitioners' joint Federal income tax returns. No authority exists for claiming the partnership loss for 1991 on Schedule C of petitioners' 1991 joint Federal income tax return.

Negligence includes the failure to make a reasonable attempt to comply with provisions of the Code and regulations or the failure to exercise ordinary and reasonable care in preparation and filing of a Federal income tax return. Sec. 6662(c). Negligence has been defined as the failure to do what a reasonable and ordinarily prudent person would do under the circumstances. Emmons v. Commissioner, 92 T.C. 342, 349 (1989), affd. 898 F.2d 50 (5th Cir. 1990); Neely v. Commissioner, 85 T.C. 934, 947 (1985).

Petitioners have offered no credible evidence that there was a reasonable cause for erroneously claiming the deductions in issue. Sec. 6664(c)(1). Petitioners are liable for the negligence penalties.

To reflect the foregoing,

Decision will be entered for respondent.

APPENDIX 2/ (TAX COURT DENIED RULE 161 MOTION FOR RECONSIDERATION)

[LEAVE TO FILE GRANTED (Signed by Judge]
United State Tax Court-filed OCT 2 1997
UNITED STATES TAX COURT
Washington, DC 20217]

WILLIAM T. HOUGH and)
NORMA HOUGH,)
Petitioners,)
v.) DOCKET
No.) 12228-95
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

DENIED OCT 9 1997

MOTION FOR RECONSIDERATION OF COURT'S OPINION

Petitioner(s) move [under] Rule 161 for reconsideration and altering of the Findings and Opinion filed August 6, 1997 on the following grounds.

I. Petitioner Mischaracterized: The Court records will reflect that this case is not represented by an illiterate non-professional "pro se" (per the erroneous designations on the Findings, Opinion and Decision) -- rather Petitioners represented herein by professional Attorney William T. Hough, Esq. admitted to this Court as the Attorney for joint Petitioners, Attorney Hough being a member of numerous state bars and federal District, Appeal and U.S. Supreme Courts; the Court's Findings and Opinion and the Court entered Decision erroneously were not addressed nor sent to "Attorney" Hough..

II. Justification and Request for Acceptance of this Motion outside of the Rule 161 time limit: As Rule 161 permits within the discretion of the Court, Petitioners file this belated Motion in light of Petitioners's Attorney on Sep.. 9, 1997 having telephoned the Clerk of this Court inquiring of the reason why Petitioners had failed to receive a copy of the Court's "Findings and Opinion", having received by certified mail earlier "solely" a copy of the

Court's Decision, and thereafter belatedly ...

APPENDIX 3/
TAX COURT DENIAL OF RULE 162 MOTION TO VACATE

[LEAVE TO FILE GRANTED/signed by Judge Arthur L. Nims, III] UNITED STATES TAX COURT
Washington, DC 20217
UNITED STATES TAX COURT
Washington, DC 20217]

WILLIAM T. HOUGH and)
NORMA HOUGH,)
Petitioners,)
v.) DOCKET
No.) 12228-95
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

MOTION TO VACATE DECISION [Denied Oct. 9, 1997]

Petitioner(s) move [under] Rule 162 for reconsideration and altering of the Decision filed August 6, 1997 on the following grounds.

The Court's Decision is expressly wholely pursuant to the determination of the Court as set forth in the Court's Opinion, T.C. Mino, 1997-161, filed Aug. 6, 1997, entered Aug. 21, 1997.

Apart therefrom, the sole Decision new matter found in the aforenoted Decision entered Aug. 21, 1996(corrected), NOT set-forth nor dealt-with in the aforenoted Opinion, namely "... deficiencies in Federal income tax and accuracy-related penalties due from petitioner for the years 1990 and 1991 as follow:

Year	Deficiency	Acccuracy-Related Penalty/Sec. 6662(a)
1990	$7,849	$1,570
1991	$9,613	$1,923

APPENDIX 4/
3RD CIRCUIT COURT APPEAL DENIAL MEMORANDUM

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT/No. 97-7580

WILLIAM T. HOUGH and)
NORMA HOUGH,)
Petitioners,)
v.) DOCKET
No.) 12228-95
COMMISSIONER OF INTERNAL REVENUE,)

ON APPEAL FROM THE UNITED STATES TAX COURT
(No. 95/7780)
Tax Court Judge: Honorable Stephen J. Swift

Submitted Under Third Circuit LAR 34.1(a)
June 8, 1998

MEMORANDUM OPINION/NYGAARD, Circuit Judge

BEFORE:SCIRICA and NYGAARD, Circuit Judge, and KATZ, Senior District Judge*1 *.
[*: The Honorable Marvin Katz. Senior District Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.]
(Filed June 30, 1998)

MEMORANDUM OPINION

NYGAARD,Circuit Judge

In this case we must decide whether the Tax Court correctly determined that the appellants' self employment tax liability for 1990 and 1991 should not be reduced by alleged pension plan contribution and claimed partnership losses by deducting the above from Schedule C of the appellants' joint Federal income tax forms. We must also decide whether the Tax Court correctly upheld the imposition of the penalties for negligence under I.R.C.Sec. 6662(c) with respect to the appellants' computation of self

employment taxes. We will affirm.

I.

This is an appeal by William T. Hough and Norma Hough from the Decision of the United States Tax Court. The Tax Court determined after a trial that the Houghs owed self-employment tax deficiency of $7,849 with an accuracy-related penalty of $1,570 for 1990; and a self-employment tax deficiency of $9,613, with an accuracy-related penalty of $1,923 for 1991.

The Houghs filed joint Federal tax returns for 1990 and 1991. They were New Jersey residents at the time they filed their petition in Tax Court. William Hough is an attorney. During the 1970s and part of the 1980s, he was practicing law through a professional corporation, and established a money purchase pension plan through this corporation. In 1975, the Commissioner issued a favorable determination letter to William Hough's corporation regarding the money purchase pension plan, qualifying the plan so that the contributions to the plan would be deductible from the corporation's gross income. The terms of the determination letter were effective only through 1975. During 1990 and 1991, William Hough was practicing law as a sole practitioner. In each of these years, he deposited $30,000 into his personal business account at a stock-brockerage company, allegedly as contributions to the money purchase plan.

The Houghs reported the income from William's legal practice on Schedule C (profit or loss from business) to their joint Federal income tax returns for the years in issue. On the Schedule C to each of their returns for 1990 and 1991, the Houghs claimed a duduction of $30,000 as a contribution to a qualified pension and profit sharing plan when calculation the income from William Hough's law practice. The claimed pension contributions were the amounts deposited into the Houghs' personal account.

The Houghs amended their joint Federal incme tax returns for 1990 and 1991 to reflecct the percentage of gross income limitation applicable to deductible pension plan contributions, and reduced the amount of the claimed Schedule C deductions with respect to the pension plan deposits into the stock brokerage account to $11,989 for 1990 and $22,339 for 1991.

Also on their 1990 and 1991 joint Federal income tax returns, the Houghs claimed loss carry-forward deductions in the respective amounts of $137,047 and $86,357 relating to a limited partnership the Houghs had invested in by the name of Shelter Realty Partners III. The claimed $137,047 loss carry-forward deduction for 1990 was shown on line 18 of the Houghs joint Federal income tax return as a partnership loss. The claimed $86,367 carry-forward deduction for 1991 relating to the investment in the limited partnership was shown on Schedule C as a business expense deduction.

By claiming the alleged pension plan contributions for 1990 and 1991 and the claimed partnership loss for 1991 as deductions on Schedule C on the Houghs's' joint Federal income tax returns, the Houghs reported self-employment income was reduced, and no self employment tax liability was reported as due on the Houghs 1990 and 1991 joint Federal income tax returns.

The Commissioner audited the Houghs's returns for 1990 and 1991 and made several adjustments, of which two are relevant to this appeal. First, the Commissioner (evidently not taking the amended returns into account) disallowed the $30,000 deductions for pension contributions claimed on the Schedule C to the Hough's 1990 and 1991 returns, explaining that the Houghs had "not established a qualified pension as defined under section 401 of the Internal Revenue Code was in existence during those years or that checks deposited into their

personal brokerage account qualify as deductible pension contributions." Second, the Commissioner disallowed as a business deduction the $86,367 loss from the Shelter Realty Partners claimed on the Schedule C to the Houghs 1991. however, after adjusting the amount of that limited partnership loss for both 1990 and 1991, the Commissioner allowed the deduction of that loss for regular income tax purposes.

After all the adjustments the Commissioner made the Houghs tax returns for 1990 and 1991, the Hough's taxable income was still negative for both hears, although by smaller amounts than initially reported. In 1990 and 1991, the Houghs were still not liable for any income tax. The adjustments to business income shown on the Schedule C attached to those returns resulted in an increase in William Hough's business income to $59,487 in 1990 and to $111,693 in 1991. Because William Hough was a sole practitioner at that time, the business income represented income from self employment, and the Commissioner's determination accordingly resulted in the imposition of self-employment taxes in the amounts of $7,849 and $9.613 for 1990 and 1991, respectively. The Commissioner also determined that the accuracy-related penalty under I.R.C. Sec. 6662(a) should be imposed with respect to the 1990 and 1991 deficiencies in the amounts of $1,570 and $1,923, respectively.

The Houghs petitioned the Tax Court for a redetermination of the deficiencies and penalties determined by the Commissioner. After a trial before the Tax Court, the Court ruled that neither the Hough's limited partnership losses nor William Hough's claimed pension contributions were properly deductible from William's income from self-employment in calculating liability from self employment taxes. The Tax Court also held that the Hough(s) had failed to establish that they had a reasonable cause for claiming such deductions,

and sustained the imposition of an accuracy related penalty for 1990 and 1991.

II.

A. Self-Employment Taxes

Taxpayers are required to pay employment taxes on the net earnings from self employment. I.R.C. Section 1401(a). A taxpayer's "self-emplloyment" income is his net from self employment, subject to certain limitations. I.R.C.Sec. 1402(b). The term net earnings from the gross income derived by an individual from any trade or business carried on by such individual, less deductions allowed under the Internal Revenue Code attributable to the trade or business, all subject to various qualifications. I.R.C.Sec.1401(a). At issue here is whether William Hough may deduct claimed contributions to a pension plan and their distributive share and limited partnership losses from the trade or business income that William Hough earned in his solo law practice in calculating the amount of such income that is subject to self-employment taxes.

With respect to the pension plan, the Houghs claimed deductions of $30,000 on the Schedules C of each of their 1990 and 1991 income tax returns for contributions to a money purchase pension plan. After the Commissioner disallowed the deductions, the Houghs conceded that the correct amounts for the claimed pension contributions were $11,989 and $22,339 for 1990 and 1991 respectively on amended joint Federal income tax returns.

As to the claimed partnership losses, section 1402(a)(13) specifically excludes from the calculation of net earnings from self-employment a limited partner's distributive share of income or loss from a partnership. No authority exists for claiming a partnership loss for 1991 on Schedule C of the Houghs' 1991 joint Federal income tax return..

B.Accuracy Related Penalty

The tax court finding that an underpayment is attributable to negligence is subject to review under the clearly erroneous standard. See e.g. Allen v. Commissioner, 925 F.2d 348, 353 (9th Cir. 1991) (applying predecessor statute I.R.C.Sec.66530.

The Internal Revenue Code imposes a penalty of 20 percent of the portion of an underpayment of tax required to be on a return that is attributable to negligence or disregard to rules or regulations. I.R.C.Sec.666(a),(b)(1). Negligence includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the penalty does not apply with respect "to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion."I.R.C.Sec.666(c)(1).

The Commissioner determined that the Houghs underpayments of self employment tax for 1990 and 1991 were attributable to negligence or disregard of rules and regulations, and that the Houghs failed to show they had reasonable cause for their underpayments or acted in good faith. The Commissioner assessed a penalty of 20 percent of the underpayment for 1990 and 1991: $1,570 for 1990 and $1,923 for 1991. The Tax Court found that the Houghs offered "no credible evidence that there was a reasonable cause for erroneously claiming the deductions in issue." The Houghs have also not offered one here. Accordingly, we hold that the accuracy-related penalty was properly imposed on the Houghs underpayments of self-employment taxes.

TO THE CLERK OF THE COURT:
Please file the foregoing Opinion.

Circuit Judge
(signed)

Dated: ...

(3rd CIR. CRT. APP. DENIAL MEMORANDUM)
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT/No. 97-7580

WILLIAM T. HOUGH and)
NORMA HOUGH,)
Petitioners,)
v.) DOCKET
No.) 12228-95
COMMISSIONER OF INTERNAL REVENUE,)

ON APPEAL FROM THE UNITED STATES TAX COURT
(No. 95/7780)
Tax Court Judge: Honorable Stephen J. Swift

Submitted Under Third Circuit LAR 34.1(a)
June 8, 1998
BEFORE:SCIRICA and NYGAARD, Circuit Judge, and KATZ, Senior District Judge* ['Note: The Honorable Marvin Katz, Senior District Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.]
(Filed ,1998)

JUDGMENT

This cause came to be heard on the record from the United States Tax Court and was submitted pursuant to Third Circuit LAR 34.1(a) on June 8,1998. On consideration whereof it is now ordered and adjudged by this court that the judgment of the Tax Court entered on August 6, 1997, is hereby AFFIRMED.

Costs taxed against appellant.

ATTEST:
(signed)
Clerk

Date: Jun 30 1998

_____ _____ _____

APPENDIX 5/3RD CIR.CRT./APPELLATE SUR PETITION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

WILLIAM T. HOUGH and
NORMA HOUGH,
Petitioners,
v.
COMMISSIONER OF INTERNAL REVENUE

Respondent
DOCKET No.95/95-7580

APPELLANT(S)'S INFORMAL-STATUS PETITION FOR REHEARING AND PETITION FOR REHEARING TO BE IN BANC

Petitioners/Appellants respectfully petition this Court for a rehearing in banc.

ERRORS OF LAW AND/OR FACT EMBODIED WITHIN THE APPELLATE COURT DECISION:

1. Taken from Appellants's Reply Brief at page 3) thereof at lines two and three:
"... in fact Appellants applied case-law Gale et al.", that Court explicitly stated that IN FACT NO "formal" trust need be in writing nor otherwise established, for a NON-CORPORATE situation in which the employee is also the trustee provided that appropriate handling and records thereof have been maintained -- Appellant having set-forth such law and arguments in Appellants Brief."

and at topic IV.2.(page 3)

"Appellee having totally "failed" to acknowledge "nor" address (offer "any" distinguishing arguments) ... both statutory and case law ...."

Relative to Appellants identified error and/or grounds stated in the Appellants's Notice of Appeal and Brief on Appeal, this ground equally

applies to the Decision of this Court.

2. (Reply Brf. p.4/topic V/paragraph lines 6-8): "... In fact Appellants in Appellant(s)'s Brief at typically pages 19 and 25 explicitely addressing Gale... to support Appellant(s) "entire" position on similar issues" of self-employment pension plans and pension contributions thereunder.

3. And at Reply Brief page 3 at lines 15(+), at pragraph IV./2h, both the Appellee AND (now) THIS COURT

"ignored and TOTALLY FAILED -- (p.3, lines 15(+) ... to rebut nor address ... both statutory and case law as set-forth in Appellant(s) Brief, ... "as though to ignore the same would cause them to go away or to be ignored by this Appellate Court."

4. At page 4, of Appellants's Reply Brief, at topic "V", paragraph lines 6 through 8:"... In fact, Appellants in Appellant(s) Brief at typically pages 19 and 25 explicitely addressing Gale ...to support Appellant(s)'s "entire position on similar issues; Appellant(s) Brief in fact already noted that the Gale... "negative" decision was based on a totally-different issue than issues controlling the Appellant(s) case. "Now", the same applies to the Decision of this Court's erroneous decision ignoring the Gale... case.

5. This Court now IN ITS DECISION HAVING NOTED THAT THE IRS INITIAL APPROVAL OF THE MPPP (Appellants's Pension Plan) did not extend to dates of the present trial subject matter. Such matter was previously address at Reply Brief page 5, at paragraph 3, now applying equally to this Court's Decision.

Another "new" as well as "misguided" issue argued by Appellee, but "not" addressed by the

IRS notice of Deficiency and now argued by this Court, is that "purportedly" the MPPP was invalid because of allegedly not having been since "reconfirmed" by the IRS. Apart from the fact that there was no such issue raised in the Notice of Deficiency nor in the Tax Court trial, IN ANY EVENT the Gale... case (aforenoted) confirms that under the controlling law (argued in Appellant(s)'s brief already as hereinabove, "pension plans" are to be "upheld" as being valid, even when there is a NON-existance of any formally-written nor adopted plan; in contrast, Appellants obtained prior IRS approval, and during trial provided massive evidence in support of MPPP records accurately maintained over the years, including the legitimate loans by the trustee at 6% for purposes of the employee reinvesting the loans by deposit to employee's own brokerage account -- all provided for by the controlling statutes identified in Appellant(s)'s foregoing Brief [typically see Appellant(s) Brief page 17 [about mid-page re "borrowed money and p. 16 re 6% interest thereon] -- and supported by evidence given by Appellants at the lower Tax Court trial."

6. Re this Court's totally erroneous Decision statement that allegedly NO "credible" evidence and "negligence", allegedly and been submitted by Appellants, TO THE CONTRARY see Appellant's Reply Brief page 6, topic 4. AND also in Appellants's earlier Brief at Grounds/Arguments #10/Appellate Brief pages 48 and 49, inclusive of advice of a Tax Attorney, and a prior 1988 "withdrawal" (and return [to Petitioners/Appellants] of prior paid taxes) by the IRS on substantially the same ground of initial 1988 IRS tax adjustment, etc..

7. Likewise, Appellants's Reply Brief page 6 at topic 5, with regard to Appellee's alleged controlling statutory law -- and "now" the same applies to this Court's Decision, both the Appellee brief and now this Court's decision

both erroneously assert allegedly that IRS "purported" controlling-law is SOLELY AND EXCLUSIVELY the IRS's cited Sec. 1401 and I.R.C. 1402 (Apellee's Brief pages such as pp. 8 & 10 & 11 & 12 & 16 -- totally ignoring Appellate(s)s "Errors of Law #1, #2, #3, #4, #5, #6, #7, #8, #11, and Appellants's Affirmation (Appellate Brief p. 50 and at Appellate Brief pp. 3 and 4 & especially Appellate Brief page 16. All thereof (of the Appelle) also totally ignore the IRS MULTIPLE "admissions" [supported by Exhibits] of/by IRS agent Al. White] that the earlier-begun Tax Shelter business prior to the passage [effective date thereof] of the applied statute(s) PRECLUDED the IRS (& lower Tax Court) from assessing and/or enforcing such alleged taxes against Petitioner(s) Shelter investment was always at-risk -- and thus deductable against Schedule C income! [Also see statutory "at-risk" rules/Appellant(s) Brief page 10/about lines 14 - 17. Likewise, Appellee(s)'s Brief and the Appellate decision of this Appellate decision of this Appellate Court each and both IGNORED prior Appellate arguments having ESTABLISHED that the SUBSEQUENT CONTROLLING statutes OVER-RIDE/preclude the IRS & lower Tax Court application of prior statute relied-on by the IRS & lower Tax Court decision -- SEE TYPICALLY (ESPECIALLY) Appellate Brief pages 7 [especitially lines 7 through p. 8 lines a through 26 ("..., for all assessed years."] -- typically evidencing over-riding of the lower Tax Court (first-time enunciated ["common law-based"]) purported non-qualified Appellants because of their (alleged by the Court) self-employment statutes -- IGNORLJNG over-riding aforenotes statutes of aforenoted Appellant Brief pp. 7 and 8, and the Appellant(s)s Brief pp. 8 through 9 including also the Gale ... decision, for example -- moreover the lower Tax Court's entire basis for purportedly sustaining the invalidation of the pension plan (MPPP) being the lower Tax Court

alleged (for the first time) controlling law [which is in fact the common-law over-ridden by the foregoing subsequent statutory law/Appellant(s) Brief pages [ESPECIALLY] 14 through 16(+), and p. 22 (especially underlined portion of that page) & especially page 23/line 11(+) (re "noncorporate employee" and contributions on behalf of "owner-employree) RE MPPP [pension plans], & statutory law of Appellant(s)'s Brief page 23 (lnes a - 34 thereof) for example.").

8) See Appellant(s) Appeal Brief/Informal at page 4, line 1(+)... the lower Tax Court -- AND NOW THIS COURT'S DECISION EACH fatally error in "law"... "ignoring" &/or failing to "recognize" and/or "apply" Appellant's additionally identified and controlling IRS 1401(a) and Section 1402(a) and 1402(a)(13), taken with typically IRS Regulations Sections 1.401-10(a), (b), and (c)/Exhibits 10', and 10a through 10c. Also included are the Regulation No. 401(c)1 [compensation to individual] and the Regulation 401(c)(2) [the official interpretation of Sec. 1402(a)]. Regulation 404(a)(8)(D) controls Regulation 1.401-10(C)(2). Also, Regulation 401(c)(4) controls Regulation 11401(c)1. The Regulation 1.401-10(b)(1) and Regulation 1.104-10(b) and Regulation 401(c)(4) jointly controlling allowable business deductions that are the same set-forth in Section 404 and 405. Additionally there is further included the Appellant's Brief-identified Senate Report re amounts contributed to a qualified retirement plan by a self-employed individual being deductable from gross income in computing adjusted gross income; moreover, the lower Tax Court failed to recognize nor apply law in accordance with the earned income of Reg. Sec. 401(c)(2) which is comparable to Sec. 162 and Sec. 212; both the lower Court and this Court's Decision ignored and/or failed to recognize that the Reg. 404(c)(2)(8) relates to the same income

as that of Reg. 401(c)(2), & that Reg. 404(a)(8)(D) re pension plan contribution (such as MPPP (MONEY PURCHASE PENSION PLAN) of Appellants) -- being the same as deduction of aforenoted Reg. Sec. 1402(a)'s net income from self employment, & that such self employment contribuition pertains to compensation to an INDIVIDUAL (under IRS Reg./Sec. 401. 401(c). 404 AND 405 [as set-forth in the legislative history of Sec. 62(a) -- as regards aforenoted Reg. 494(a)(8).

9) Moreover, as set-forth on Appellant's Brief 6, lines 16(+), the Tax Court (and apparently now also this Appellate Court) ERRONEOUSLY assumed the "roll-over" to "sole-practitioner" to be a "distribution" -- rather than a "same-business" roll-over of the Money Purchase Pension Plan -- which "APART FROM" aforenoted federal statutory regulations PERMITTING self-employed individuals ALSO to benefit from the SAME pension plan, WOULD OTHERWISE have been the case under common law -- which is the ERRONEOUS standard utilized by the lower Tax Court (and now also erroneously by THIS Court's decision on Appeal), as noted (set-forth) on the Appellant's AppealBrief page 7, at lines 8 thrugh page 9 (herewith incorated by reference) -- and also Appellate Brief page 16 regarding the Tax Court's (and NOW also this Court's Decision) embodies an "erroneous assuption" that "common law" (never argued nor supported by any identified valid law) per se by Appellee) "allegedly" (held) controlled and defeated Appellants by virtue of self-employment -- likewise THIS court thereby ignoring the "FACT" (and Appellant's substantiated evidence) of legitimate loans by the trustee at a believable and authentic rate of 6% interest, and as controlled by statutory law.]

10) Likewise Appellants argued the controlling law of "at-risk" of Appellants Exhibit 32, 35

and 36 (all argued at trial AND THE SAME STILL APPLIES AGAINST THIS COURT'S ERRONEOUS DECISION) as set-forth in the Argued Tax Management's (Brief p. 10) "Detailed Analysis of A-4/455-2d" stating "... the activity of holding real estate property was not subject to the at-risk rules until the enactment of the 1986 Tax Reform Act ..." --- which BELATEDLY occured AFTER Petitioners became owners of the tax-shelter realty as limited partners thereof -- whereby the investment shelter-cost of (to) Appellants was "at-risk" and thereby deductable; see also argued law at Brief page 27, lines 1 through 14. All of the foregoing law was IGNORED by the tax Court decision AND by THIS court's recent decision to which this Petition for Rehearing is addressed. The roll-over CONTROLLING LAW-aspect -- i.e. change of ownership from a corporate state to a self-owned sole-practitioner business, was ALSO argued, at Applellant's Brief on Appeal page 18 (bottom)/statutory "EMPLOYEE BENEFIT PLAN/P.[2]/19.040 (under Reg. Sec. 1.4401-6(a)(1) continued/part (such that the MPPP plan was NOT termninated and was continuingly in effect during the entire periods in question in this Appeal, FOR THE same IDENTICAL services (Brief pp. 19 & 20, also incorporated by reference./Re Employee Benefit Plan/Reg. Sec. 1.401-1(b)(2) p.(3) at topic (5)(i) and (ii). ADDITIONALLY on Appellate Brief pages 20 and 21, there is again-cited IN DETAIL the Gale... case and other controlling law AND ON PAGE 21 THAT-casses "statement" that as employer, self-employed individuals are permitted, like any other employers, to deduct contributions made to pension ... plans for the benefit of themselves as done in/under Appellant's MPPP Plan. On page 22, that CASE is set-forth re its statement re "earned income" -- including its reference to and quote of the Senate Report and legislative history, ALL OF WHICH IS also incorporated by reference into this document. At the bottom of Brief page 22 is

the quote "[This bill] -- is designed to encourage the establishment of voluntary retirement plans by self-employed persons by allowing a self-employed individuals to be covered by qualified plans and by extending to them some of the favorable tax benefits persent law now [heretofore] provides in the case of qualified retirement plans established by employers for their employees." Additionall law is set-forth on Briefed page 23 through line 35 (to wit). Error of the lower Tax Court is further set-forth on Brief page 25, beginning at line 7 through line 22, herewith incorporated by reference.

11) Additionally, re inaccurate IRS figures in their computations, both the lower Tax Court and THIS Court IGNORED THE Appellants'sd Brief's Page 27 through Brief Page 32, all of which are incorporated by reference.

12) Likewise the "at-risk" law was argued on Appelant Brief page 33 through 34, but NEVER ACKNOWLEDGED NOR REBUTTED by the Lower Court nor THIS Courts's recent decision.

13) CONTRARY TO THE STATEMENTS "alleged" by recent decision by THIS Court -- ERRONEOUSLY alleging no statutory law was contained in the Appellants's Brief that would "controvert" the common law" position/basis of alleged liability of Appellants, both the Tax Court and THIS COURT arbitrarily erronesouly asserted that none of the FOREGOING CASE AND STATUTORY LAW was set-forth nor argued by Appellants -- OBVIOUS INACCURATE AND MISLEADING STATEMENT(S) IN THIS COURT recent decision -- AS EVIDENCED BY FOREGOING APPELLANTS-ARGUMENTS of previously cited law of Appellants's Brief on Appeal (and earlier at the Tax Court level).

14) Likewise, the Tax Court and THIS Court chose to or inadvertently IGNORED the lower and

Appellate Court arguments of "zero" Tax Shelter value and of the Tax Shelter Rules that PRECLUDED sale by the Limited Partners (Appellants) of their limited partnership sharesd thereoif -- AUTOMATICALLY RENDERING THEM TO BE DEDUCTABLE COSE, those Brief pages 39 and 40 likewise herewith incorporated by reference into this Petition.

15) In light of the IRS advance assurance AND additionally in light of the Tax Court having given its "OF RECORD" evidentiary "holding" that the temporary-listing of the Schedule C deduction as a non-schedule C "partnership" standard deduction -- based on IRS oral agreement [stated at trial, as evidentiary testimony] for the tax year 1990 did NOT and does NOT "preclude" Appellants's right to contest and argue its application and listing under Schedule "C" -- as set-forth in Appelate Brief "Ground/Argument Against Lower Court Error #9 -- found in Appellate Brief page 46/last-line through page 48, line 17 which last page 47/last two lines thereof identify the location of the Trial Court's aforenoted ruling at Trial record 54 and page 55 (lines 3 - 5/evidenced by Exh. 19. Accordingly, the 1990 tax-shelter deduction should be and is compelled to be decided on its merits, and the shifting thereof (recomputation) to the Schedule C against (to off-set) Schedule C income otherwise taxable/Social Security Taxation.

16) The Appellate Court Decision at page 7/last line stated that the Tax Court found the Houghs offered "no credible evidence that there was a reasonable cause for erroneeously claiming the deductions inissue.", To the contrary, as set-forth explicitly on Appellate Brief page 49 at lines 18 are multiple evidentiary grounds set-forth including the incorporation by reference of the appended Affirmation of Appellants and the Trial Tax Court record

Exhibit 44b testimony pages -- identified for each of trial record pages 73 and 69, referring to contested matters justifying amply justifying Appellants's withholding payment of assessed taxes, including also the IRS agent White's admission statement (with Appellants's affirmation statement and evidentiary supporting exhibit) that the Shelter limited partner "loss"-distributions (as Schedule C-deductions) and "at-risk" tax shelter-investment as Schedule C deductions were valid deduction/Schedule C. Those lines include trial Court Appellant manual statement re the Shelter supported Appellant's positions of being deductable at-risk investments by Appellants; this must be takentogether with Appellant's submitted Exhibit b testimony pages -- page 73/lines 1 through 18/tax attorney, and together with IRS numerous computation-errors -- Appellants's aforenoted matters being supported by the Appellants's Affirmation re Exh. 43 relating to testimony page 69/lines 1 through 22, and Appellants cited "controlling" statutory-law controlling sole/self-employed VALID pension plan. NO specific counter arguments NOR specific counter-evidence was ever submitted nor taken at trial by Appellee, in any Appellee effort to counter the aforenoted controlling CREDIBLE evidence of Appellants, NOR did the Appellee ever submit any "counter evidence" nor "explanation" of nor on the aforenoted matter(s). While meaning of the word "credible" should be self-apparent, Black's Law dictionary characterizes the word to means "worthy of belief"; apart from the aforenoted evidentiarily-supported trial record supported by Appellant's Trial testimony and arguments -- all supported by Appellants's Affidavit, and apart from Appellee never having taken any "counter" testimony whatsoever, the recent Appellate Court Decision/holding totally FAILED to state "any" basis whasoever for its "broad" simplistic Tax Court statement that (allegedly)

the Appellants/Hough offered no credible evidence that there was a reasonable cause for erroneously claiming deductions "in issue" and that "The Houghs have also not offered one here". The Dicision later statment must be weighed against the foregoing grounds and argument raised in the Petition for Rehearing, together with additionally the aforenoted Court errors and misstatements and erroneous holdings -- which clearly alone or at-least cummulatively establish(es) GROSS error and gross abuse of Appellant's rights in the Appellate Court aforenoted supporting negative comments and negative holding! The Court well knows that Mr. Hough is an attorney, and the Appellants's supporting subject matter justifying reversing the IRS penalty assessments, is believed to be totally credible and substantial, and clearly sufficient to support Appellants's position; it is also noted that Appellee failed to counter any of the Appellant's credible grounds, i.e. uncontested. Appellants clearly as aforenoted established in the trial Court and in the Appellant's Trial Brief, and in this Petition, that no penalty nor fine should be assessed against Appellants and that Compensatory damages should be awarded to Appellants/Houghs for the ongoing abuses and hardships caused by Appellee to the Houghs by the insensitive and non-responsive and beguiling IRS. Together with the foregoing, Appellee (IRS) having at trial NEVER presented any counter-evidence against that Court ruling, nor did the Appellee argue "credibility" of any one or more of Appellant's grounds -- thus affording the Tax Court and the Appellate Court NO evidentiary basis for contesting the credibility of Appellants's supporting evidence and arguments.

Favorable consideration and full reversal of this Court's recent decision and of the lower Tax Court decision are respectfully requested.

PLEASE NOTE THAT APPELLANTS HAVE MADE EVERY EFFORT TO CONFORM THIS Petition for Rehearing TO

AT-LEAST MINIMUM REQUIREMENTS OF THIS COURT FOR Appellants's INFORMAL BRIEF-status.

William T. Hough(signed)
Attorney for Appellants
(signed by Norma Hough)

Notice of Service of Appellee:

This day, aforenoted Attorney for Appellant placed in the mail by registered mail, a true copy of this document, as service thereof on Appellee, by mailing the same to Loretta C. Argret, Assistant Attorney General, in care of (c/or) Charles Bricken at (addressed to) Tax Division, Department of Justice, P.O. Box 502, Washington, DC 20044.

Dated: July 8, 1998; William T. Hough
(Signed by William T. & Norma Hough)

APPENDIX 6:
3RD CIR.CRT./DENIAL OF REHEARING PETITION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
DOCKET No.95/95-7580

WILLIAM T. HOUGH and
NORMA HOUGH,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(No. 95-12228)
Tax Court Judge: Stephen J. Swift

SUR PETITION FOR REHEARING

BEFORE: BECKER, Chief Judge, SLOVITER, STAPLETON, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE, and RENDELL, Circuit Judges, and KATZ, Senior Judge*

[*:The Honorable Marvin Katz,Senior District Judge for the United States District Court for the Eastern District of Pennsylvania, sitting by designation. Vot limited to panel rehearing only.

The Petition for rehearing filed by the Appellant in the above-entitled case having been submitted to three judges who participated in the decision of this court and to all other available judges in regular service, and non judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

By the Court,

(signed)

Circuit Judge

Dated: AUG 28 1998

(initialed)

_____ _____ _____

APPENDIX 7/ORDER:
3rd Cir. Court Recall of Certified Judgment

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
DOCKET No.95/95-7580
(D.C.No.9512228)
TAX COURT

Re: William T. Hough; Norma Hough v Commissioner of IRS

Present: SCIRICA, COWEN, Circuit Judges and KATZ, District Judge

ORDER

It appearing that a panel of this Court Disposed of the above case by the Judgement entered on May 30, 1998, and it further appearing that a petition for rehearing was timely filed by the Appellants on July 9, 1998, and it further appearing that the Clerk's Office ERRONEOUSLY issued the certified judgment in lieu of formal mandate on July 22, 1998.

It is ORDERED that the certified judgment issued in lieu of formal mandate on July 22, 1998 be and is hereby RECALLED.

For the Court
(signed)
Clerk

Dated August 10, 1998

Appendix 8/3rd CIRCUIT COURT
REISSUED JUDGMENT

UNITED STATES COURT OF APPEALS
P. Douglas Sisk, Clerk
FOR THE THIRD CIRCUIT
DOCKET No.95/95-7580
21400 United States Courthouse
601 Market Street
Philadelphia PA 19106-1790

Telephone
215-597-3080

July 22, 1990

Mr. Charles S.Caszza, Clerk
United States Tax Court
400 Second Street, N.W.
Washington, DC 20217

Re: Docket # 97-7580
Hough vs. Commissioner of IRS
D. C. CIV. No. 95/12228

Dear Mr. Casazza:

Enclosed is a certified copy of the judgment in the above-entitled case(s), together with copy of the opinion. The certified judgment is reissued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the reissuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,
P. DOUGLAS SISK, Clerk
(Signed)
By: Leslie Johnson
Case Manager

Enclosure
cc: William T. Hough
Charles Bricken, Esq.
William S. Estabrook, Esq.

FOR THE THIRD CIRCUIT
DOCKET No.95/95-7580

WILLIAM T. HOUGH and
NORMA HOUGH,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(No. 95-12228)
Tax Court Judge: Stephen J. Swift

Submitted Under Third Circuit LAR 34.1(a)
June 8, 1998

BEFORE: SCIRICA and NYGAARD, Circuit Judges,
and KATZ, Senior District Judge*

[*:The Honorable Marvin Katz, Serior District Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.]

(Filed _____, 1998

JUDGMENT

This cause came to be heard on the record from the United States Tax Court and was submitted pursuant to Third Circuit LAR 34.1(a) on June 8, 1998. On consideration whereof it is now ordered and adjudged by this court that the judgment of the Tax-Court entered on August 6, 1997, is hereby AFFIRMED.

Costs taxed against appellant.

ATTEST:
(Signed)

Clerk

Date: June 3_, 1998

Certified as a true copy and reissued in lieu of a formal mandate on September 8, 1998

Teste: (signature)
Clerk, United States Court of Appeals for the Third Circuit